146 U.S. 60

Office Supreme Court U. S.
FILED
OCT. 14 1890
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

ALFRED EARNSHAW, PLAINTIFF IN error,
vs.
THE UNITED STATES. } No. 49.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR THE DEFENDANT IN ERROR.

WM. A. MAURY,
Assistant Attorney-General.

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BRIEF FOR THE DEFENDANT IN ERROR.

This is an action by the United States against the plaintiff in error, brought in the United States district court for the eastern district of Pennsylvania, to recover the difference between the amount of duties assessed and paid on the

entered value of eleven different importations of iron ore into the port of New York by the plaintiff in error, and the amount of duties afterwards assessed on the same merchandise on final liquidation, the said difference in amount being, in the aggregate, $1,611.20.

The case was tried twice, the last trial being on November 24, 1886, and the result was a verdict for the plaintiff for the sum of $1,756.20 and 6 cents costs, and judgment was entered accordingly (pp. 8, 9).

The case was then taken to the circuit court of the United States for said district by writ of error (p. 20), and the judgment of the district court was there affirmed on May 28, 1887 (p. 21).

BILL OF EXCEPTIONS.

The bill of exceptions (pp. 9–17) shows that the plaintiff proved that certain cargoes of Bilboa iron ore were imported by the defendant into the port of New York, loaded in vessels at Bordeaux, France (p. 9); that the appraiser added to the

entered value of the cargoes 16.75 livas per ton to make market value at Bordeaux, from whence the ore was shipped (p. 9); that thereupon, on August 2, 1882, the defendant demanded a re-appraisement and paid the fee required (p. 9); that on March 31, 1883, the re-appraisement was made and the duty finally liquidated at the advanced value fixed by the re-appraisement, from which there was no protest and appeal, and the plaintiff closed (p. 11).

The bill of exceptions further shows that the defendant then gave evidence tending to show that the day appointed for the merchant appraisement demanded by him was in June, 1883 (p. 11); that on the day appointed the defendant attended, together with the merchant, appraiser, and general appraiser (p. 11); that thereupon the Government asked for an adjournment, and the hearing was adjourned without a day being fixed, it being stated, however, to the defendant that he would be notified (p. 11).

Accordingly, on March 18, 1884, the defendant, who lived in Philadelphia, was notified by

the general appraiser that the re-appraisement would take place at the latter's office, in New York, on March 20, 1884 (p. 11).

At that time, however, the defendant was in Cuba (p. 11), and defendant's clerk wrote the general appraiser on March 19 that defendant was out of the country and would not be back before the beginning of May, and asking a postponement. The appraiser telegraphed in reply: "Your case adjourned to Tuesday, March 25th, 12 m." (pp. 11, 12).

After defendant's return, and on May 10, 1884, the collector demanded the additional amount, as shown by the collector's reliquidation (p. 12).

On May 14, 1884, the defendant appealed to the Secretary of the Treasury by a letter containing a full statement. This letter and the correspondence that followed between the defendant and the Treasury Department is in the record (pp. 12–16), but need not be particularly noticed.

The defendant then read in evidence the fol-

lowing regulations by the Secretary of the Treasury (ed. 1884):

> Article 466. On the receipt of this report the collector will select one discreet and experienced merchant, a citizen of the United States, familiar with the character and value of the goods in question, to be associated with an appraiser at large, if the attendance of such officer be practicable, to examine and appraise the same according to law. (R. S., 2930.)
>
> * * * The appraiser at large will be notified of the appeal, of the time fixed for re-appraisement, and of the name of the merchant appraiser. The importer will be notified of the time and place, but not of the name of the merchant selected to assist in the appraisement.
>
> * * * The importer or his agent will be allowed to be present, and to offer such explanations and statements as may be pertinent to the case. (p. 16.)

The defendant asked the court to instruct the jury as follows:

> (1) If the defendant attended on the day appointed for the appraisement by the merchant appraisers, and the United States not being ready to go on and the hearing was postponed indefinitely, the defendant was entitled to such reasonable notice of the time and place of holding the appraisement as would enable him to attend.
>
> (2) If the United States failed to move in the matter after the adjournment June, 1883, until March, 1884, and the defendant was then temporarily absent from home, he was entitled to a reasonable time to enable him to return and attend at the appraisement.
>
> (3) If the United States insisted on the proceeding with the re-appraisement in the absence of the defendant under the circumstances as shown by the testimony, the re-appraisement is not a valid merchant's appraisement. (Pp. 16, 17.)

But the court, being of opinion that the action of the appraisers was regular, and in accordance with law, declined to instruct the jury as thus

requested, and directed a verdict for the plaintiff (p. 17).

ARGUMENT.

Confessedly, the plaintiff in error can not prevail, except upon the ground that the reappraisement was *ultra vires;* for, if the appraisers acted within their powers under the law and the Treasury regulations, this court has no revisory authority over their proceedings, it being well established, both by the statute (§ 2930 R. S.) and the rulings of this court, that an appraiser's valuation of merchandise, apart from any matter of law, is *absolutely final* and *must be taken as the collector's basis for liquidating duty.*

It is conceived to be a misconception of the law to say that proceedings before appraisers on appeal are analogous to judicial proceedings, and that, therefore, the importer has the *right* to bring witnesses before them, as in an ordinary contest over a question of fact.

It is noticeable that *the law* does not require appraisers to notify the importer before they act, nor does it require them to examine wit-

nesses, but "by all reasonable ways and means in his or their power to ascertain, estimate, and appraise the true and actual market value and wholesale price," etc. (§ 2902, R. S.).

The appraisers, general and local, are experts in their line of duty, and the merchants called to their assistance, under section 2930, Revised Statutes, are required to be "discreet and experienced" and "familiar with the character and value of the goods" to be appraised.

If the appraisers feel that they are fully able to appraise merchandise without extraneous aid they may do so and properly decline to hear witnesses adduced by the importer. No witnesses can be examined before them, unless called by them or the collector and naval officer, as provided by article 459 of the regulations of 1884, which is as follows:

> It is lawful for the appraisers, or the collector and naval officer, as the case may be, to call before them and examine, upon oath or affirmation, any owner, importer, consignee, or other person, touching any matter or thing which they may deem material in ascertaining the true market value or wholesale price of merchandise imported; and to require the production, on oath or affirmation, to the collector, or to any permanent appraiser, of any letters, accounts, or invoices in his possession, relating to the same; for which purpose they are authorized to administer oaths or affirmations. Such persons are not entitled to compensation.

This regulation was necessary to facilitate the collection of the revenue, which would be seriously, and, we may add, unnecessarily obstructed by making proceedings before appraisers judicial or quasi-judicial.

This view was insisted upon by the Treasury Department in 1876, in the following letter to the United States general appraiser at New York, which peremptorily orders a discontinuance of the practice of giving a judicial character to the proceedings before appraisers on appeal:

TREASURY DEPARTMENT, *February* 10, 1876.

SIR: The Department is informed that it is your practice when acting officially in conjunction with a merchant appraiser, in cases of appeal from the action of the local appraiser, to allow appellants to be heard in argument by attorney, and to permit them to produce witnesses, and to cross-examine persons called on behalf of the Government to give testimony as to the character or value of merchandise; that, in fact, the proceedings have gradually assumed the character of a judicial inquiry, upon which judgment is rendered in accordance with the preponderance of testimony on either side, instead of being conducted as an investigation by experts, to ascertain whether the local appraiser has reported the true and proper market value of the merchandise in question.

This practice does not appear to be contemplated by law or regulation, and is believed to work injuriously to the interests of the revenue. It must, therefore, be at once discontinued.

While the regulations require the appraisers, on appeal, to pursue their inquiry into the question of the actual character and dutiable value of the goods under re-examination in such manner as they deem most conducive to a just and equitable determination of such question, it is expected that they will arrive at that determination from their own knowledge and

judgment as experts, in substantially the same manner as in the case of original appraisements.

In this connection your attention is called to article 1087 of the Treasury Regulations, and a strict conformity to the same is hereby enjoined.

A copy of these instructions will be furnished for the information and guidance of the general appraiser at Boston, Philadelphia, Baltimore, and New Orleans, respectively.

Respectfully,

CHAS. F. CONANT,
Acting Secretary.

UNITED STATES GENERAL APPRAISER, *New York.*

(S. S. 2655. See, also, S. S. 6957, where similar instructions were given by Secretary Manning.)

Article 1087 of the regulation of 1874, referred to in the above communication, is the same as article 1416 of the regulation of 1884, which governs this case, with the exception of the concluding sentence, as is indicated by brackets in the copy of article 1087, which follows hereupon.

Appraisers are, in cases of re-appraisement, to give courteous and due attention to the explanations and statements of importers, in person or by representative, relating to the subject-matter under examination; but they are to limit the privilege so accorded to one person in each single case of re-appraisement, to receive only statements of fact, to require all facts to be stated concisely and not argumentatively, and to pursue their inquiry into the question of the actual character and dutiable value of the goods under re-examination in such manner as they deem most conducive to a just and equitable determination of the question. [Merchant appraisers, appointed in cases of appeal from the decisions of the customs appraisers, are also to be governed by this article.]

Article 469 of the Regulations of 1884, relied on by the plaintiff in error, does not support his

claim to a right to examine witnesses before the appraisers, on the appeal, because that article merely says, "The *importer or his agent will be allowed to be present*, and to offer *such explanations and statements* as may be pertinent to the case,"—language which looks to the importer or his agent, and not to witnesses, as the source of information.

It is thus manifest that whether it is apt or inapt to call the board of appraisers a "*tribunal*," they are not such in the sense in which that term is used in the brief of the plaintiff in error. They are only a "tribunal" in some general and untechnical sense.

They are a part of a system for the *expeditious* collection and payment into the Treasury of customs duties. They are selected because they possess the knowledge and experience which will enable them to determine valuations, as a general thing, without extraneous aid. Their determinations are the determinations of *experts*, who bring with them the knowledge that is required to guide them to correct conclusions. If they

are at a loss, it is their duty, under the law, to inform themselves in such ways as they may deem best.

Such being the nature of the appraiser's functions, it may be asked wherein had the plaintiff in error cause of complaint?

When the plaintiff in error left the country he knew perfectly well that he might be notified, any day, that the re-appraisement proceedings would be resumed. Yet he advances no excuse whatever for not having instructed some one to represent him in that event, or for not having had some understanding with the appraisers looking to further delay, for his convenience.

Manifestly, the appraisers had a right to expect that his clerk, who was his brother, or somebody else, would represent him.

What were the appraisers to do? Were the liquidation and collection of the tax to await the pleasure of the plaintiff in error? Can an importer put off indefinitely proceedings ~~desired~~ denied for the purpose of insuring the speedy collection of the revenue, which is the life of the Government?